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**OFFICE OF PETITIONS**

In re Application of :  
James F. Wolfston :  
Application No. 09/300,881 : DECISION ON PETITION  
Filed: 28 April, 1999 :  
Atty Docket No. C054-2 :  
:

This is a decision on the petition filed on 8 March, 2006, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 7 December, 2005, for failure to properly reply to the final Office action mailed 6 July, 2005, which set a three (3) month shortened statutory period for reply. On 6 December, 2005, a Request for Continued Examination (RCE) Request form was filed. However, no submission under 37 CFR 1.114

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

was filed. Thus, the RCE Request was improper. On 8 January, 2006, an amendment intended as the submission under 37 CFR 1.114 was filed.<sup>2</sup> The filing of the present petition precedes the mailing of Notice of Abandonment.

It is noted that the papers filed on 6 December, 2005, required a two (2) month extension of time to be timely. As such, a two (2) month extension of time will be charged to counsel's deposit account as authorized on the fee transmittal filed on 6 December, 2005.<sup>3</sup>

This application is being referred to the Technology Center for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup> The amendment filed on 8 January, 2006, was untimely as a submission under 37 CFR 1.114, as the maximum extendable period for reply to the final Office action mailed on 6 July, 2005, expired on 7 January, 2006.

<sup>3</sup> Under 37 CFR 1.136(a)(3), an authorization to charge all required fees, fees under 37 CFR 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time for its timely submission.